

IN THE UNITED STATES DISTRICT COURT IN AND FOR
DISTRICT OF SOUTH DAKOTA, WESTERN DIVISION

FILED

HOWARD PRETENDS EAGLE,

Plaintiff,

v.

SEDGWICK CLAIMS MANAGEMENT
SERVICES, INC. and FIRST
AMERICANS INSURANCE SERVICE,
INC.,

Defendants.

SEP 18 2006


CLERK

Case No. 06-5072

(Shannon County, S.D. Circuit Court, 7th
Judicial District Case No. 56-CIV-06-100)

DEFENDANTS' NOTICE OF REMOVAL

TO: THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
SOUTH DAKOTA, WESTERN DIVISION; THE CLERK OF THE
CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, SHANNON
COUNTY, SOUTH DAKOTA; AND TO THE PLAINTIFF NAMED
ABOVE AND HIS ATTORNEYS

This Notice of Removal of Defendants Sedgwick Claims Management Services, Inc. ("Sedgwick") and First Americans Insurance Service, Inc. ("FAIS") (hereinafter collectively referred to as the "Defendants") is submitted pursuant to the provisions of 28 U.S.C. §§ 1332 and 1441 et seq. In support of their Notice, Defendants state:

1. Sedgwick and FAIS are the named defendants in an action commenced on August 16, 2006, in the 7th Judicial Circuit Court, Shannon County, State of South Dakota, styled Howard Pretends Eagle, Plaintiff v. Sedgwick Claims Management Services, Inc. and First Americans Insurance Service, Inc., Defendants, Case No. 56-CIV-06-100. A file-stamped copy of the Complaint setting forth Plaintiff's claims in that action against the Defendants is attached hereto as Exhibit "A".

2. Plaintiff resides on the Pine Ridge Indian Reservation in Jackson County, State of South Dakota. (Exhibit "A", ¶2).

3. Plaintiff alleges in his Complaint that the Defendants are "citizens of a state other than South Dakota." (Exhibit "A", ¶3). In fact, FAIS is a Nebraska corporation with its principal place of business in Grand Island, Nebraska. Sedgwick is an Illinois corporation with its principal office and corporate headquarters located in Memphis, Tennessee.

4. FAIS was first served with Summons and Complaint at its offices in Grand Island, Nebraska on August 18, 2006. A copy of the Summons issued by the state court is attached hereto as Exhibit "B". A copy of the Proof of Service with Summons served on FAIS is attached as Exhibit "C".

5. Sedgwick was first served with Summons and Complaint at its Omaha, Nebraska office on August 23, 2006. A copy of the Proof of Service with Summons served on Sedgwick is attached as Exhibit "D".

6. A copy of the Docket Sheet of the Circuit Court for the Seventh Judicial Circuit, Shannon County, South Dakota, demonstrating that Exhibits "A" through "D" constitute all of the process, pleadings and orders on file in Plaintiff's state court action is attached hereto as Exhibit "E."

7. All of the Defendants consent and agree to the removal of this action to the United States District Court for the District of South Dakota, Western Division.

8. The Plaintiff's claims arise in connection with an Occupational Injury Benefit Plan & Employers Liability Insurance Policy (the "Policy") purchased by Plaintiff's employer, the Ogalala Sioux Tribe Department of Public Safety ("DPS"), from First Nations Compensation Plan ("FNCP"). The policy sold by FNCP to DPS provided insurance coverage to DPS for

claims made by its employees for injuries suffered in the course of their employment with DPS including, among other things, medical expenses in the event of an accident to which the Policy applied.

9. In the present action, Plaintiff, a non-certified police officer employed by DPS alleges that: (1) while performing his job as an officer of DPS, he was severely injured in a one-car motor vehicle accident (Exhibit "A", ¶¶7-8); (2) he is a beneficiary of the Policy and is owed the same duties that Defendants owe his employer, DPS (Exhibit "A", ¶5); (3) he is entitled to benefits under the Policy, including medical and rehabilitation expenses and disability benefits (Exhibit "A", ¶¶9-10); (4) FAIS,¹ acting through Sedgwick, denied his claim for benefits (Exhibit "A", ¶14); (5) Defendants had no reasonable basis for denial of the claim for benefits and knew there was no reasonable basis for denial of the claim (Exhibit "A", ¶¶15-16); (6) Defendants owed Plaintiff a duty of good faith and fair dealing (Exhibit "A", ¶79); (7) Defendants breached their duty of good faith and fair dealing (Exhibit "A", ¶80); (8) FAIS is liable to Plaintiff for benefits under the Policy (Exhibit "A", ¶90); and (9) Defendants are liable to Plaintiff for bad faith (Exhibit "A", ¶92).

10. In his prayer for relief, Plaintiff requests benefits under the Policy, attorney fees under SDCL 58-12-3, compensatory damages and punitive damages, all in unspecified amounts. (Exhibit "A", ¶13).

11. Though Plaintiff has not alleged in his Complaint the specific amount of damages truly sought against the Defendants, as of September 1, 2006, Plaintiff, or his health care providers, have submitted claims for payment of medical benefits under the Policy for amounts

¹ Presumably Plaintiff means FNCP, which sold the Policy to DPS. FNCP is a corporation organized and existing under the laws of the Winnebago Tribe of Nebraska with its principal place of business in Grand Island, Nebraska. Accordingly, for diversity purposes, FNCP is a citizen of the State of Nebraska. See, e.g., R.C. Hedreen Co. v. Crow Tribal Housing Authority, 521 F. Supp. 599, 602-603 (D. Mont. 1981).

in excess of \$150,000.00. (Exhibit “F”, Affidavit of Kris Cross, ¶5). In the present action, Plaintiff seeks to recover these amounts from Defendants and he seeks additional amounts as well. (Exhibit “A”, ¶¶9, 86, 87, 88, 90).

12. Based upon the foregoing, the amount of damages truly sought by Plaintiff, and thus, the amount in controversy, exceeds the sum of \$75,000.00 exclusive of costs and interest. In addition, complete diversity of citizenship exists between the Plaintiff and the Defendants. Therefore, this Court would properly have original jurisdiction over this matter pursuant to 28 U.S.C. § 1332. Accordingly, the action is removable under 28 U.S.C. § 1441.

13. Thirty (30) days have not yet expired since this action became removable to this Court. Accordingly, removal is timely.

14. Copies of all process, pleadings and orders served upon the Defendants in the state court action are attached hereto as Exhibits “A” through “D”.

WHEREFORE, Sedgwick Claims Management Services, Inc. and First Americans Insurance Service, Inc. pray that the above-entitled action be removed from the Circuit Court for the Seventh Judicial Circuit, Shannon County, South Dakota, to the United States District Court for the District of South Dakota, Western Division.

Dated: September 18th, 2006.

**GUNDERSON, PALMER, GOODSSELL &
NELSON, LLP**

By: 

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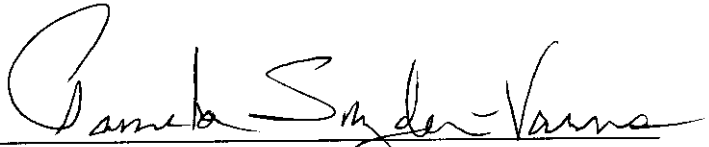
**ATTORNEYS FOR DEFENDANTS,
SEDGWICK CLAIMS MANAGEMENT
SERVICES, INC. AND FIRST
AMERICANS INSURANCE SERVICE,
INC.**

CERTIFICATE OF SERVICE

I do hereby certify that on this 18th day of September, 2006, a true and correct copy of the above and foregoing **DEFENDANTS' NOTICE OF REMOVAL** was sent by U.S. Mail, with proper postage thereon fully paid, to:

James D. Leach
1617 Sheridan Lake Road
Rapid City, SD 57702

Michael Abourezk
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